



February 11, 1999

Ms. Lilia Ledesma-Gonzalez  
Assistant City Attorney  
City of McAllen  
P.O. Box 220  
McAllen, Texas 78505-0220

OR99-0424

Dear Ms. Ledesma:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 122211.

The McAllen Police Department (the "department") received a request for all reports relating to 2400 South 23<sup>rd</sup> Street. You assert that some of the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the documents submitted.

First, you assert that section 552.108(a)(2) excepts the following reports from public disclosure: 96-066577, 96-056885, 96-033992, 95-059044, 95-005443, 94-064589, 93-068616, 93-047447, and 92-033742. Section 552.108(a)(2) excepts from public disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication. You have not submitted the reports which you seek to withhold under section 552.108(a)(2); therefore, we are unable to rule on these reports.

Next, you contend that fourteen other reports are made confidential by section 51.14(d) of the Family Code. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses confidentiality provisions in the Family Code. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to conduct occurring before January 1, 1996 are governed by the former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon). This office concluded in 1996 that section 58.007 of the Family Code, as enacted by the Seventy-fourth Legislature, does not make confidential juvenile law enforcement records relating to conduct that occurred on or after January 1, 1996. Open Records Decision No. 644 (1996). The Seventy-fifth Legislature, however, amended section 58.007 to once again make juvenile law

enforcement records confidential, effective September 1, 1997. Act of June 2, 1997, 75th Leg., R.S., ch. 1086, 1997 Tex. Sess. Law Serv. 4179, 4187 (Vernon). It chose not to make this most recent amendment retroactive in application. Consequently, law enforcement records pertaining to juvenile conduct that occurred between January 1, 1996 and September 1, 1997, are not subject to the confidentiality provisions of either the former section 51.14(d) or the current section 58.007 of the Family Code. Under sections 51.14(d) and 58.007, law enforcement records concerning a child are confidential. Section 51.02(1)(A) defines "child" as a person who is ten years of age or older and under seventeen years of age.

You must withhold the following reports under section 51.14(d) as they concern juvenile conduct that occurred before January 1, 1996: 94-023779, 93-035926, and 91-044742. You must release the following reports because they do not fall within the purview of either section 51.14(d) or 58.007: 96-059828, 96-029582, 96-028861, 96-023941, 94-051567, 93-001738, and 92-004296. However, we note that the reports that you must release contain social security numbers and information that you must withhold under section 552.130 as discussed below. Finally, you have submitted redacted copies of the following reports: 93-030954, 93-016379, and 93-009838. In the future, you must submit the information in its entirety, without any redactions, in order for this office to properly review the information and make a determination. We are unable to determine whether the three redacted reports fall within the purview of section 51.14(d) of the Family Code. As presented, the redacted reports do not appear to be confidential under section 51.14(d). We caution that the distribution of confidential information is a criminal offense. Gov't Code § 552.352.

Offense report number 94-05136 is confidential under section 261.201 of the Family Code. Section 261.201 of the Family Code reads in part as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We believe that the requested information consists of reports, records, and working papers used or developed in an investigation made under chapter 261 of the Family Code. Because you have not cited any specific rule that the investigating agency has adopted with regard

to the release of this type of information, we assume that no such regulation exists. Given that assumption, the requested information is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). Accordingly, you must not release offense report number 94-051346 to the requestor.<sup>1</sup>

The submitted documents include accident reports. The Seventy-fifth Legislature repealed article 6701d of the Texas Civil Statutes and amended section 550.065 of the Transportation Code concerning the disclosure of accident report information. Act of May 29, 1997, 75th Leg., R.S. ch. 1187, 1997 Tex. Sess. Law Serv. 4575 (Vernon) (to be codified at Transp. Code § 550.065). However, a Travis County district court has issued a temporary injunction enjoining the enforcement of the amendment to section 550.065 of the Transportation Code. *Texas Daily Newspaper Ass'n, v. Morales*, No. 97-08930 (345th Dist. Ct., Travis County, Tex., Oct. 24, 1997) (second amended agreed temporary injunction). A temporary injunction preserves the status quo until the final hearing of a case on its merits. *Janus Films, Inc. v. City of Fort Worth*, 358 S.W.2d 589 (1962). The supreme court has defined the status quo as “the last, actual peaceable, non-contested status that preceded the pending controversy.” *Texas v. Southwestern Bell Tel. Co.* 526 S.W.2d 526, 528 (Tex. 1975). The status quo of accident report information prior to the enactment of S.B. 1069 is governed by section 47 of article 6701d, V.T.C.S.<sup>2</sup>

Section 47(b)(1) provides that:

The Department or a law enforcement agency employing a peace officer who made an accident report is required to release a copy of the report on request to:

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<sup>1</sup>We note that if the investigation has been referred to the Department of Protective and Regulatory Services (the “department”), a requestor who is a parent or other legal representative of a child who is the subject of reported abuse or neglect may be entitled to access to the department’s records. Fam. Code § 261.201(f).

<sup>2</sup>Although the Seventy-fourth Legislature repealed and codified article 6701d as part of the Transportation Code, the legislature did not intend a substantive change of the law but merely a recodification of existing law. Act of May 1, 1995, 74th Leg., R.S., ch. 165, §§ 24, 25 1995 Tex. Sess. Law Serv. 1025, 1870-71. Furthermore, the Seventy-fourth Legislature, without reference to the repeal and codification of V.T.C.S. article 6701d, amended section 47 of article 6701d, V.T.C.S., relating to the disclosure of accident reports. Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Sess. Law Serv. 4413, 4414. Because the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code, the amendment is preserved and given effect as part of the code provision. Gov’t Code § 311.031(c). Thus, the amendment of section 47 of article 6701d, V.T.C.S. is the existing law regarding the availability of accident report information, and may be found following section 550.065 of the Transportation Code. *See also* Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Sess. Law Serv. 4413, 4414.

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(D) a person who provides the Department or the law enforcement agency with two or more of the following:

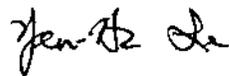
- (i) the date of the accident;
- (ii) the name of any person involved in the accident; or
- (iii) the specific location of the accident.

V.T.C.S. art. 6701d, § 47(b)(1). Under this provision, a law enforcement agency "is required to release" a copy of an accident report to a person who provides the law enforcement agency with two or more pieces of information specified by the statute. *Id.* The information is otherwise confidential. The requestor has not supplied the requisite two pieces of information. Because the requestor has not complied with section 47(b)(1) of article 6701d, you need not release the accident reports.

Lastly, you must release the remaining submitted reports as you have not asserted any exceptions for withholding the information as required by section 552.301 of the Government Code. However, we note that the reports contain information protected from disclosure by sections 552.101 and 552.130 of the Government Code. The social security numbers in the reports may be confidential if they were obtained or are maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990. 42 U.S.C. section 405(c)(2)(C)(vii); *see* Open Records Decision No. 622 (1994). Section 552.130 excepts information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. We have marked the social security numbers and section 552.130 information that you must withhold.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/nc

Ref: ID# 122211

Enclosures: Marked documents

cc: Mr. Ruben R. Pena  
222 W. Harrison  
Harlingen, Texas 78550  
(w/o enclosures)